IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JEANETTE RENÉ ABNEY,                          )
Administratix of the Estate of Gerald         )
Benjamin Abney, Jr., and                      )
THE STATE OF NORTH CAROLINA                    )
ex rel. JEANETTE RENÉ ABNEY,                  )
Administatrix of the Estate of                )
Gerald Benjamin Abney, Jr.,                   )
                                              )
            Plaintiffs,                        )
                                              )
      v.                                       )          1:04CV00652
                                              )
DEPUTY JOEL RODNEY COE,                        )
Individually and in his official capacity     )
as a Deputy of the Randolph County            )
Sheriff's Department,                          )
SHERIFF LITCHARD HURLEY,                       )
Individually and in his official capacity     )
as Sheriff of Randolph County;                )
and WESTERN SURETY COMPANY,                    )
                                              )
            Defendants.                        )
_____            )

ORDER

Tilley, Chief Judge

        On December 15, 2005, the Magistrate Judge filed his Recommended Ruling

[Doc. # 83] in this case and notice was served on the parties pursuant to 28

U.S.C. § 636(b).  Both parties have filed timely objections to the recommendation

of the Magistrate Judge [Doc. #s 95 & 96].  Accordingly, the Court has

undertaken a *de novo* review of those issues to which an objection was made and

has determined, for the reasons set forth in a contemporaneously filed

Memorandum Opinion, that it will adopt the recommendation of the Magistrate Judge in its entirety.

It is therefore ORDERED that Deputy Coe's Motion for Summary Judgment [Doc. # 40] be denied in part and granted in part. Specifically, summary judgment will be (1) granted to Deputy Coe in his official capacity on the federal claims made under 42 U.S.C. § 1983 in counts I, II, and III of the First Amended Complaint; (2) granted to Deputy Coe in all capacities on the state law claim of assault and battery in count VIII; (3) denied to Deputy Coe in his individual capacity for counts I, II, and III; and (4) denied in all capacities as to the state law claims of gross negligence and wrongful death in counts VII and IX.

It is further ORDERED that Sheriff Hurley's Motion for Summary Judgment [Doc. # 37] be granted as to all claims made against him in both his individual and official capacities.

It is further ORDERED that Western Surety Company's Motion for Summary Judgment [Doc. # 37] be denied in part and granted in part. Summary judgment is denied as to counts VII and IX of the First Amended Complaint and granted as to count VIII.

It is further ORDERED that plaintiff Jeanette René Abney's Motion to Strike

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the Defendants' Objections to the Recommended Ruling of the Magistrate Judge

[Doc. # 98] is DENIED.

This the day of April 25, 2006

                                      __/s/ N. Carlton Tilley, Jr.__
                                      United States District Judge